IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Crl.MC.No. 2978 of 2007()

PETITIONER:

P.J.JAMES, S/O.P.V.JOSE, PROPRIETOR,
ELSA AGENCIES & DISTRIBUTORS, O.S.NO.44,
IVTH FLOOR, G.C.D.A.SHOPPING COMPLEX,
MARINE DRIVE, ERNAKULAM.

BY ADV. SRI.P.SATHISAN

RESPONDENTS:

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1. P.J.JOSEPH, PALAKKARAN HOUSE,
GODOWN ROAD, EDAPPALLY.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.2978 Of 2007

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Dated this the 26th day of September, 2007

ORDER

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Sections 406 and 420 IPC. Cognizance has been taken on the basis of the final report submitted by the Police after due investigation. The petitioner had earlier come before this Court with a grievance that his claim for discharge under Section 239 Cr.P.C. has not been considered by the learned Magistrate. That Crl.M.C was disposed of by the order dated 13.12.07 with observations/directions. Later the learned Magistrate considered the plea of discharge under Section 239 Cr.P.C. The learned Magistrate evidently came to the conclusion that the petitioner is not entitled for discharge under Section 239 Cr.P.C and proceeded to frame charges. A copy of which the same is produced as Annexure 10.

2. The learned counsel for the petitioner contends that this prosecution is only a retaliation against the prosecution under Section 138 of Negotiable Instrument Act , initiated by the petitioner against the de facto complainant . The contention that the petitioner had taken away the blank signed cheque leaf cannot stand at all, as the petitioner is the person entitled to keep possession of the premises

and the de facto complainant had no rights over the property. The learned counsel for the petitioner contends that the assertion of the de facto complainant that he was in exclusive possession of the premises cannot stand in the light of the documents produced and the undisputed fact that the petitioner is the registered lessee under the G.C.D.A. In these circumstances it is prayed that powers under Section 482 may be invoked to quash the proceedings against the petitioner .

3. Charges have been framed under Section 240 Cr.P.C. Ordinarily and normally I would expect the indictee if he is aggrieved by the order framing charges to challenge the charge under Section 240 Cr.P.C by invoking the revisional jurisdiction. The petitioner has no intention to do so. He has come to this Court with a prayer to invoke powers under Section 482 Cr.P.C. I have heard the learned counsel for the petitioner in detail. I have perused the records. To accept the contention of the learned counsel for the petitioner, disputed questions of fact will have to be resolved. The question will have to be decided as to the person in whose exclusive possession the premises was on date of the alleged offence. Not withstanding the documents- registered lease deed, it is contended that not the petitioner but the de facto complainant was in physical possession. I

am of the opinion that such complex disputed questions of facts cannot be attempted to be resolved in proceedings under Section 482 Cr.P.C. It is confirmed that the matter has been listed for trial tomorrow that is 27.9.07. I am of opinion that the petitioner must take part in the trial and raise all his contentions. I find no compelling reason to invoke the powers under Section 482 Cr.P.C. to prematurely bring to termination of proceedings initiated against the petitioner.

4. This Crl.M.C is, in these circumstances dismissed. Needless to say that this dismissal is solely on the ground that the extra ordinary inherent jurisdiction is found to be not appropriate to be invoked. I have not chosen to express any opinion on the disputed questions. The petitioner's right to raise all his contentions before the trial court shall remain unfettered.

(R.BASANT, JUDGE)

sj